IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1380 of 2004
in
SPECIAL CIVIL APPLICATION No 6623 of 2004
with
LETTERS PATENT APPEAL No 1382 of 2004
with
LETTERS PATENT APPEAL No 1383 of 2004
with
LETTERS PATENT APPEAL No 1395 of 2004
with
LETTERS PATENT APPEAL No 1733 of 2004
with
CIVIL APPLICATIONS No 9910, 5177, 5187,
5186, 5291 and 7072 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH Sd/-
and
HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 & 2 YES; 3 to 5 NO

CHARUTAR AROGYA MANDAL & others

Versus

JUSTICE R J SHAH (RETD.) FEE COMMITTEE (MEDICAL) FOR SELF FINANCED PROFESSIONAL COLLEGES & others

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Appearance:

1. LPA Nos. 1380,1382,1383,1395 and 1733 of 2004 & CAs.

MR SB VAKIL senior advocate and MR DC DAVE, advocate for Appellants.

MR BP TANNA senior advocate with MS KERAWALA and MR NIKHIL KARIEL advocates, MR JR NANAVATI senior advocate with MR AR THAKER advocate and MR ASPI KAPADIA advocate for Respondents.

MR KB TRIVEDI ADDL ADVOCATE GENERAL with Ms.SK Vishen AGP for State.

CORAM : HON'BLE MR.JUSTICE M.S.SHAH

and

HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 16/03/2005

C.A.V. JUDGEMENT

(Per: HON'BLE MR.JUSTICE D.H.WAGHELA for the Court)

1. These appeals under Clause 15 of the Letters Patent are preferred from the common judgment by, or on the basis of which the petitions of the appellants are rejected and challenge of the educational institutions to the fee-structure prescribed by Justice R.J.Shah (Retd.) Fee Committee for Self-financed Professional Colleges is turned down. That Fee Committee, originally joined as the only respondent, was set up pursuant to the directions of the Supreme Court in ISLAMIC ACADEMY OF EDUCATION v. STATE OF KARNATAKA [(2003) 6 SCC 697]. Subsequently, the State of Gujarat have been added by an amendment as a party-respondent and the Parents Association of Medical and Dental Students has also joined as party-respondent. Some students of the medical colleges at Karamsad and Surat also applied for being joined as parties and their advocates were also heard.

2. According to the impugned judgment, mainly two contentions were raised to assail the decision of the respondent Committee. One was that the constitution of the Committee itself was bad in law and, therefore, its decision was ab initio void. The second contention was that the Committee has not given any reason for arriving at the decision as to the amount of fees fixed for particular institutions. The learned Single Judge took the view that once the fee fixed by the Committee was given binding effect by the Apex Court, High Court would not exercise its powers under Article 226 of the Constitution to nullify the binding effect. Even if the binding effect did not foreclose judicial scrutiny under Article 226, High Court would not entertain such petition

of a party who had acquiesced in the constitution and proceedings of the Committee and surrendered to its jurisdiction. Even otherwise, the Committee was an expert body in the field and normally the Court would not sit in appeal over the decision of such expert body. It is observed that the powers exercised by the Committee were administrative in nature and it was not always necessary that its decision must be by way of a speaking order. It is noted in the impugned judgment that there was no allegation in the petition that on account of any extraneous consideration the decision of the Committee was vitiated. Adverting to the factual aspect, it is held that if the expert body had, after taking into consideration the details and materials produced, arrived at the decision after actual inspection of the colleges and the relevant records, the Court exercising powers under Article 226 of the Constitution could not undertake the exercise of substituting a different figure of fees.

2.1 It is noted in the impugned judgment that there was no disclosure on the part of the petitioner, at least initially, of the undertaking filed by the petitioner pursuant to the earlier proceedings under which part of the fees already collected were required to be refunded. Such practice on the part of the petitioner was deprecated and it was stated as an additional circumstance which disentitled the appellant from invoking the discretionary and equitable jurisdiction of the Court under Article 226 of the Constitution.

3. There is no doubt or controversy about the fact that the present round of litigations has sprung from the fixation of fees by the Committee set up under the directions of the Supreme Court in ISLAMIC ACADEMY (supra) and its constitution, powers, procedure and parameters are governed by the directions of the Supreme Court. Therefore, it would be advantageous to quote as under, in extenso, the relevant part of the text of the said judgment:-

> "7. So far as the first question is concerned, in our view the majority judgment is very clear. There can be no fixing of a rigid fee structure by the Government. Each institute must have the freedom to fix its own fee structure taking into consideration the need to generate funds to run the institution and to provide facilities necessary for the benefit of the students. They must also be able to generate surplus which must be used for the betterment and growth of that educational institution. In

paragraph 56 of the judgment, it has been categorically laid down that the decision on the fees to be charged must necessarily be left to the private educational institutions that do not seek and which are not dependent upon any funds from the Government. Each institute will be entitled to have its own fee structure. The fee structure for each institute must be fixed keeping in mind the infrastructure and facilities available, the investments made, salaries paid to the teachers and staff, future plans for expansion and/or betterment of the institution etc. Of course, there can be no profiteering and capitation fees cannot be charged. It thus needs to be emphasized that as per the majority judgment, imparting of education is essentially charitable in nature. Thus, the surplus/profit that can be generated must be only for the benefit/use of that educational institution. Profit/surplus cannot be diverted for any other use or purpose and cannot be used for personal gain or for any other business or enterprise. As, at present, there are statutes/regulations which govern the fixation of fees and this Court has not yet considered the validity of those statutes/regulations, we direct that in order to give effect to the judgment of T.M.A.PAI FOUNDATION case, the respective State Governments/ authority concerned shall set up, in each State, a Committee headed by a retired High Court Judge who shall be nominated by the Chief Justice of that State. The other member, who shall be nominated by the Judge, should be a Chartered Accountant of repute. A representative of the Medical Council of India (in short "MCI") or the All India Council for Technical Education (in short "AICTE'), depending on the type of institution, shall also be a member. The Secretary of the State Government in charge of Medical Education or Technical Education, as the case may be, shall be a member and Secretary of the Committee. The Committee should be free to nominate/co-opt another independent person of repute, so that the total number of members of the Committee shall not exceed five. Each educational institute must place before this Committee, well in advance of the academic year, its proposed fee structure. Along with the proposed fee structure all relevant documents and books of accounts must also be produced before the Committee for their scrutiny. The Committee

shall then decide whether the fees proposed by that institute are justified and are not profiteering or charging capitation fee. The Committee will be at liberty to approve the fee structure or to propose some other fee which can be charged by the institute. The fee fixed by the Committee shall be binding for a period of three years, at the end of which period the institute would be at liberty to apply for revision. Once fees are fixed by the Committee, the institute cannot charge either directly or indirectly any other amount over and above the amount fixed as fees. If any other amount is charged, under any other head or guise e.g. donations, the same would amount to charging of capitation fee...."

4. It is observed by the Apex Court in paragraph 20 and in paragraphs 221 and 223, by way of an epilogue, that:-

"20. "Our direction for setting up two sets of Committees in the States has been passed under Article 142 of the Constitution of India which shall remain in force till appropriate legislation is enacted by Parliament......."

"221. .....We have laid down new laws and issued directions purported to be in terms of Article 142 of the Constitution. We have interpreted T.M.A.PAI , but we have also made endeavours to give effect to it. In some areas it was possible, in some other, it was not."

"223. The superior courts in India exist for interpretation of the Constitution or interpretation of statutes. They cannot evolve a foolproof system on the basis of affidavits filed by the parties or upon hearing their counsel. Certain details of vexing problems on the basis of the interpretation given by this Court must be undertaken by the statutory bodies which have the requisite expertise. It is expected that statutory bodies would be able to perform their duties for which they have been established. The doors of the Court should not be knocked every time, if a problem arises in implementation of the judgment, however slight it may be. The Court has its own limitations. The problems

which can be sorted at the ground level by holding consultations should not be allowed to be brought to the Court. It is, in that view of the matter, we have thought it fit to direct setting up of committees for the aforementioned purposes."

4.1 It is also observed in paragraphs 139 to 163 of ISLAMIC ACADEMY (supra) that:-

"139. A judgment, it is trite, is not to be read as a statute. The ratio decidendi of a judgment is its reasoning which can be deciphered only upon reading the same in its entirety. The ratio decidendi of a case or the principles and reasons on which it is based is distinct from the relief finally granted or the manner adopted for its disposal."

"147. ......It is beyond any doubt that in the matter of determination of the fee structure the unaided institutions exercise a greater autonomy. They, like any other citizen carrying on an occupation, must be held to be entitled to a reasonable surplus for development of education and expansion of the institution. Reasonable surplus doctrine can be given effect to only if the institutions make profits out of their investments. .....What is forbidden is: (a) capitation fee, and (b) profiteering."

"154. The fee structure, thus, in relation to each and every college must be determined separately keeping in view several factors, including facilities available, the age of the institution, investments made, future plan for expansion and betterment of the educational standard etc. The case of each institution in this behalf is required to be considered by an appropriate Committee. For the said purpose, even the books of accounts maintained by the institution may have to be looked into. Whatever is determined by the Committee by way of a fee structure having regard to relevant factors, some of which are enumerated hereinbefore, the management of the institution would not be entitled to charge anything more.

155. While determining the fee structure,

safeguard has to be provided for so that professional institutions do not become auction houses for the purpose of selling seats. Having regard to the statement of law laid down in paragraph 56 of the judgment, it would have been better, if sufficient guidelines could have been provided for. Such a task which is a difficult one has to be left to the Committee. While fixing the fee structure the Committee shall also take into consideration, inter alia, the salary or remuneration paid to the members of the faculty and other staff, the investment made by them, the infrastructure provided and plan for future development of the institution as also expansion of the educational institution. Future planning or improvement of facilities may be provided for. An institution may want to invest in an expensive device (for medical colleges) or a powerful computer (for technical college). These factors are also required to be taken care of. The State must evolve a detailed procedure for constitution and smooth functioning of the Committee.

156. While this Court has not laid down any fixed guidelines as regards fee structure, in my opinion, reasonable surplus should ordinarily vary from 6% to 15%, as such surplus would be utilized for expansion of the system and development of education."

5. Clearer propositions that essentially emerge from perusal of the above observations and directions may be summarised as under:-

(a) Each institute must have the freedom to fix its own fee structure taking into consideration the need to generate funds to run the institution, to provide facilities necessary for the benefit of the students and to generate surplus which must be used for betterment and growth of that educational institution;

(b) The fee structure for each institute must be fixed keeping in mind the infrastructure and facilities available, the investment made, salaries paid to teachers and staff, future plans for expansion and/or betterment of the institution etc.;

(c) There can be no profiteering and capitation fee

cannot be charged;

(d) Imparting of education is essentially charitable in nature;

(e) Committees, as prescribed, have to be set up for giving effect to the judgment of T.M.A.PAI case. The Committees are to be set up through the State by virtue of the direction issued under Article 142 of the Constitution; in absence of appropriate legislation and without sufficient guidelines. Since a foolproof system may not be available and vexing problems arising from the interpretation given by the Court had to be sorted out by a body with requisite expertise, directions to set up the Committees is issued so that the problems which could be sorted out at the ground level are not allowed to be brought to the Court (see paragraph 223 quoted hereinabove). In absence of sufficient guidelines, the difficult task of fixing fees had to be left to the Committee and the State is directed to evolve a detailed procedure for constitution and smooth functioning of the Committee (see paragraph 155 quoted hereinabove).

(f) Each educational institute must place before the Committee its proposed fee structure along with all relevant documents and books of accounts;

(g) The Committee has to decide whether the fees proposed by the institute are justified and whether there is profiteering or charging of capitation fees;

(h) The Committee has to approve the proposed fee structure or propose some other fees;

(i) The doors of the Court should not be knocked every time, if a problem arises in implementation of the judgment;

(j) The Court has not laid down any fixed guidelines as regards fee structure. However, reasonable surplus should ordinarily vary from 6% to 15%;

(k) The problems which can be sorted at the ground level by holding consultation should not be allowed to be brought to the Court.

(l) The fees fixed by the Committee shall be binding for a period of three years; and

(m) Once fees are fixed by the Committee, the institute cannot charge either directly or indirectly any other amount over and above the amount fixed as fees;

It may be pertinent to note here that, as held by the Supreme Court in STATE OF U.P. v. PRADHAN SANGH KSHETTRA SAMITI [AIR 1995 SC 1512], in construing legal documents, it is not just their form but their substance which has to be taken into consideration.

6. Assailing the fee structure prescribed by the respondent Committee and the impugned judgment, learned senior advocate Mr.S.B.Vakil, appearing for the appellants submitted, in substance, that the Committee was not set up by the State Government, and the Committee had not fixed the fee structure, strictly in accordance with the directions of the Apex Court in ISLAMIC ACADEMY (supra). That obviously many non-members were active and participating in the proceedings of the Committee. That the Committee was discharging a quasi-judicial function and in absence of a reasoned order fixing the fee structure in various educational institutions, the fixation was bad in law and non est. That reasons, if any, cannot be supplied subsequently by filing affidavits. That the fee structure prescribed by the Committee violated the fundamental right of the educational institutions as guaranteed under Article 19 of the Constitution and petition under Article 226 was the proper remedy therefor. That there was no suppression of material facts regarding the orders in earlier proceedings and the undertaking filed by the appellants.

7. Learned advocate Mr.D.C.Dave, also appearing for the appellants, submitted that there was nothing on record to show what procedure the Committee had followed in assessing the data furnished by the appellants and how the figures of fees were arrived at. That not the Committee, but the Sub-Committees had visited the institutions and the institutions were not called upon to explain its figures of expenses and projections before discarding them to arrive at a different fee structure.

8. Learned senior advocate Mr.B.P.Tanna, appearing for the Committee, relying upon several affidavits filed on its behalf, submitted that the Committee was duly constituted complying with the essential requirements of the directions of the Supreme Court. That the appellants had submitted to the jurisdiction of and acquiesced in

the process carried out by the Committee and the objections now raised were by way of afterthought. That the data methodically collected in the form of questionnaire and tables from the educational institutions had been analysed to get a general idea of the facilities, infrastructure, capital investments incurred over the last two years, plans for development on hand at present and compliance of requirements concerning the faculty and other staff members as prescribed by the regulatory authorities. That the Committee had taken assistance of a team of chartered accountants of high integrity and impeccable character for the purpose of analysis of the data. That the team constituted by the Committee had conducted personal visit of majority of the institutions to verify the facilities and infrastructure available at the institute and the adequacy of staff members and further to clarify on certain issues arising from analysis of the data submitted by the institution concerned. During such visits, the Committee had held discussions with some students and staff members in private to receive their feed-back on certain specific issues. The Sub-Committee had also visited the hospitals run by the institutions to verify the quality of service and care provided to the patients. Since the fees to be arrived at was based on recurring costs as well as some allowances for maintenance and future development, additional data had also been called for to work out the cost of education per student. It was observed by the Committee that almost half of the number of institutions and colleges concerned had not furnished complete data and established colleges hardly had any issue, but new colleges were finding it difficult to manage cash flows and had asked for major increase in fees. That all colleges had not proposed their own fee structure and some of the physiotherapy colleges had proposed fees of Rs.75,000/= to Rs.95,000/= against the fees of Rs.35,000/= charged in the last year. Mostly higher fees were proposed on the basis of promises and plans only and capital cost and fair return on funds invested were, in some cases, claimed as justification for higher fees. That the Committee had to scale down the amounts of depreciation on the basis of economic life of assets as against the depreciation claimed as per the Income Tax Act. That there were divergent claims for inclusion of cost of running the hospital attached to the medical college. That provision for future development was claimed by almost all the institutions at a very high amount. That the Committee had, before finalising the fee structure, analysed the data provided by the colleges, considered the report made on the basis of the personal visit of the

Sub-Committee and the views of students and parents. After the final analysis, each institute had been graded as A, B or C depending on the facilities available, infrastructure, assets and liabilities etc. and fee structure for each grade was arrived at. That separate affidavit in respect of each of the appellant-institutions was filed to justify and explain the fee structure prescribed in respect of the institution concerned.

8.1 He submitted that the Committee constituted under the directions of the Apex Court was essentially intended to meet the contingency in absence of appropriate legislation in that regard and, therefore, the function of the Committee was legislative in nature. Therefore, challenge to the fixation of fees on the ground of absence of recorded reasons or violation of any of the principles of natural justice was not maintainable.

8.2 Learned senior counsel Mr.J.R.Nanavaty, appearing for the Parents Association for Medical and Dental Students, submitted that the original petitions under Article 226 of the Constitution were incompetent and did not lie insofar as the Committee joined as party-respondent was constituted under the directions issued by the Supreme Court in exercise of the powers under Article 142 of the Constitution. The order made pursuant to exercise of such power of the Supreme Court cannot be the subject-matter of challenge before the High Court. When it was ordained by the Supreme Court in ISLAMIC ACADEMY (supra) that the fee shall be fixed by the Committee and it shall be binding for a period of three years, no other Court would have the power to examine or nullify the execution and operation of such order. He also submitted that the Committee was neither "State" nor "Authority" nor a "Person" to which writ can be issued under Article 226. That it is clearly provided in Clause (4) of Article 226 that the power conferred on the High Court was not in derogation of the power conferred upon the Supreme Court by Clause (2) of Article 32. He also submitted that reasonable restriction on the fundamental right of the educational institutions under Article 19 was imposed by the Supreme Court in ISLAMIC ACADEMY (supra) and it cannot be raised as an issue before the High Court. He submitted that any dispute or issue arising out of execution of the order of the Supreme Court can only be decided by the Hon'ble Supreme Court. He made an impassioned appeal to relieve the students and parents of the anxiety created by the educational institutions by collecting and demanding very high fees which most of the parents simply cannot afford.

9. Learned Additional Advocate General Mr.K.B.Trivedi, appearing for the State Government, submitted that the Committee, as prescribed by the judgment in ISLAMIC ACADEMY (supra), was put in place by the State Government in substantial compliance of the order. That minor and insignificant irregularity, if any, in appointment of the members did not vitiate the proceedings and the fixation of fees. That objections to the composition or constitution of the Committee or its proceedings were not voiced during the proceedings of the Committee and, therefore, they must be treated as waived. That the Committee discharged a quasi-legislative function and fixation of fees by it could not be interfered unless it was apparently obnoxious.

9.1 Learned counsel Mr.Aspi Kapadia, appearing for some of the students, also submitted that, by and large, the Committee was duly constituted and it admirably completed its job within the short available time. He submitted that there was no hard and fast rule that an order without reason has to be quashed. He also submitted that even if this Court were to sit in appeal over the fixation of fees by the Committee, it could not be interfered even on merits since appropriate fees were prescribed by the Committee.

9.2 During the course of elaborate oral arguments running for two weeks, Mr.Vakil having the lion's share, the learned counsel referred to a number of judgments to thrash the issues threadbare and those judgments are considered while discussing the issues raised by the appellant.

10. Challenging the constitution and composition of the Committee, it was the contention that the Committee was constituted by Resolution dated 26.12.2003 of the State Government wherein it was expressly stated that the Chartered Accountant Member was to be selected by the Committee; whereas a Chartered Accountant of repute was required to be nominated by the retired High Court Judge according to the clear direction in ISLAMIC ACADEMY (supra). As against that, it was pointed out from the affidavits-in-reply and the minutes of the meeting of Fee Committee, held on 26.2.2004, under the chairmanship of Shri R.J.Shah, the Hon'ble retired High Court Judge, that the name of the Chartered Accountant was nominated as the Chartered Accountant Member of the Committee by the Chairman. It was contended that the Chartered Accountant so nominated was not a practising Chartered Accountant but an officer in a mills company as admitted in his

affidavit-in-sur-rejoinder and, therefore, he cannot be regarded as a Chartered Accountant of repute as required by ISLAMIC ACADEMY (supra). That contention, however, was dropped on behalf of the appellant. The other contention regarding the nominee of the Medical Council of India was to the effect that, initially, the person nominated by the Medical Council of India was one Dr.Raj Vardhan Azad but the Committee had nominated Dr.Nitin Vora, a Member of the MCI, working as Director, Employees State Insurance Scheme, as representative of the MCI. It is averred that Dr.Nitin Vora was appointed by the Health and Family Welfare Department to be a Member of the Committee and, therefore, he was, in reality, a State Representative and not a person nominated by the MCI. Explaining that, it is stated in the counter-affidavit that it was the prerogative of the Committee to appoint the representative of the MCI and, in the interest of smooth functioning of the Committee, a local person who could attend every meeting of the Committee as the representative of the MCI was nominated as its member by the Committee. The MCI was immediately informed about the decision and the stand of the Committee. This has to be seen in the context of the fact that the Committee was running against time even as the self-financed institutions were clamouring for withdrawal of the balance amount lying in the bank pursuant to the interim orders of the High Court in several petitions. It is clear that nomination by Medical Council of India of a member of the Committee was not an absolute necessity but a representative of the MCI to be a member of the Committee was the only requirement under the directions of the Supreme Court.

10.1 It was submitted for the appellant, relying on INDIAN CHARGE CHROME LTD. v. UNION OF INDIA [(2003) 2 SCC 533], that even statutory authorities exercising statutory power must act within the four corners of the statute and an order to be passed by the Government must be passed by an authority competent therefor and not by an officer without authority. As held in MARATHWADA UNIVERSITY v. SESHRAO BALWANT RAO CHAVAN [AIR 1989 SC 1582], the principles of ratification apparently do not have any application with regard to exercise of powers conferred under statutory provisions. The statutory authority cannot travel beyond the power conferred and any action without power has no legal validity. It is ab initio void and cannot be ratified. As against that, it was pointed out, on the basis of the observations of the Supreme Court in UNIVERSITY OF ALLAHABAD v. AMRIT CHAND TRIPATHI [(1986) 4 SCC 176], that mere circumstance that non-members were also invited to be present at the

meeting to assist the Committee at its deliberations would not alter the original constitution of the Committee and hence on that basis it cannot be claimed that the Committee which took the decision in the meeting was not the same as that constituted originally. In view of the facts recounted hereinabove regarding constitution of the Committee, it appears that the contentions of the appellant that the Committee was not duly constituted by the Government and non-members had participated in its proceedings were hyper-technical and without any substance.

10.2 It is held by the Supreme Court in DR. G.SARANA vs. UNIVERSITY OF LUCKNOW AND OTHERS (AIR 1976 SC 2428) that, where a candidate for selection knowing fully well the relevant facts about the members of the Selection Board voluntarily appeared for interview without raising any kind of objection against the constitution of the Selection Board and took a chance of favourable recommendation in his favour, it was not open to him to turn around and question the constitution of the Board when the decision was unfavourable to him. The following observations made by the Supreme Court in MANAK LAL v. PREM CHAND [AIR 1957 SC 425] are apposite:

> "It seems clear that the appellant wanted to take a chance to secure a favourable report from the tribunal which was constituted and when he found that he was confronted with an unfavourable report, he adopted the device of raising the present technical point."

10.3 It is held by this Court in AHMEDABAD MUNICIPAL CORPORATION v. JOITRAM GANESH AND ANOTHER [1969 G.L.R. 431] that, when the Court does not lack inherent jurisdiction, the objection as to the invalidity cannot be raised at the execution stage or in collateral proceedings. The distinction between nullity and invalidity has been pointed out by the Supreme Court in DHIRENDRA NATH GORAI v. SUDHIR CHANDRA GHOSH AND OTHERS [AIR 1964 SC 1300]. After referring to Macnamara on "Nullity and Irregularities" it is observed:

> ".....No hard and fast line can be drawn between a nullity and an irregularity; but this much is clear, that an irregularity is a deviation from a rule of law which does not take away the foundation or authority for the proceeding, or apply to its whole operation, whereas a nullity is a proceeding that is taken without any foundation for it or is so essentially defective

as to be of no avail or effect whatever, or is void and incapable of being validated."

Having regard to the facts and legal propositions discussed hereinabove, we hold that the Committee was legally and duly constituted and there was no infirmity, much less any fundamental defect or inherent lack of jurisdiction in the proceedings of the Committee on account of its constitution and working so as to render its decision a nullity.

11. The next argument vehemently elaborated by Mr.Vakil was that, whether the decision fixing the fees was administrative, judicial, quasi-judicial or quasi-legislative, in absence of recorded reasons and communication thereof, the decision was vitiated. It was also submitted that reasons cannot be supplied by subsequent affidavits and reasons cannot be dispensed with just because the Committee was headed by a retired Judge of the High Court. The appellant relied upon the judgment of the Supreme Court in MOHINDER SINGH GILL v. THE CHIEF ELECTION COMMISSIONER, NEW DELHI [AIR 1978 SC 851] to submit that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons. Relying upon the judgment of the Supreme Court in SIEMENS ENGINEERING AND MANUFACTURING CO. OF INDIA LTD. v. THE UNION OF INDIA AND ANOTHER [AIR 1976 SC 1785], it was submitted that, whenever an authority makes an order in exercise of a quasi-judicial function, it must record its reasons in support of the order.

11.1 It was submitted that the Supreme Court had no legislative powers and, therefore, a delegate of the Supreme Court, i.e. the Committee, cannot be discharging a legislative or quasi-legislative function. As held by the Supreme Court in STATE OF UTTAR PRADESH v. RENUSAGAR POWER COMPANY [AIR 1988 SC 1737], when an authority had power to fix different rates and the function was quasi-legislative in character, the decision in such a case must be arrived at objectively and in consonance with the principles of natural justice. When the power was exercised with reference to a class, it would be in the nature of subordinate legislation, but when the power was exercised with reference to individual, it would be administrative. Relying on WORKMEN OF MEENAKSHI MILLS LTD. vs. MEENAKSHI MILLS LTD. [(1992) 3 SCC 336], it was submitted that while exercising powers in the matter of granting or refusing permission for retrenchment, the authority did not exercise powers which were purely

administrative, but exercised powers which were quasi-judicial in nature and reasons had to be recorded in the order that was passed. These observations are, however, made in the context of the provisions of Section 25-N of the Industrial Disputes Act, 1947 wherein recording of reasons in writing is statutorily prescribed.

11.2 Relying on the judgment of the Supreme Court in C.B.GAUTAM v. UNION OF INDIA [1993) 1 SCC 78], it was submitted that the recording of reasons which lead to the passing of the order allows the party aggrieved to demonstrate that the reasons which persuaded the authority to pass an order adverse to his interest were erroneous, irrational or irrelevant and the obligation to record reasons and convey the same to the party concerned operates as a deterrent against possible arbitrary action by the quasi-judicial or the executive authority invested with judicial powers. The judgment in THE SCHEDULED CASTE AND WEAKER SECTION WELFARE ASSOCIATION v. STATE OF KARNATAKA [AIR 1991 SC 1117] was relied upon to emphasis the observations therein as under:

> "15. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power and the rule of natural justice operates in areas not covered by any law validly made. What particular rule of natural justice should apply to a given case must depend to an extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the body of persons appointed for that purpose....."
>
> (emphasis supplied)

11.3 Relying upon the judgment of the Supreme Court in STATE OF U.P. v. PRADHAN SANGH KSHETTRA SAMITI [AIR 1995 SC 1512], it was also submitted that there could be, in the matters which are very urgent, even a post-decisional hearing in compliance of the principles of natural justice, but there is nothing like post-decisional reasoning to be supplied by affidavits filed afterwards. Thus, without derogating from the first submission that the impugned decision of the Committee was quasi-judicial, it was submitted that even if it were purely administrative or quasi-legislative in nature, the recording and supplying of reasons was

indispensable whereas the Committee had, at best, only indicated the table of fees prescribed for a number of colleges in the form of "Fee Committee Report" (annexed as Annexure-D to the affidavit-in-reply on behalf of respondent No.1 at page 271 of the paper-book in LPA No.1380 of 2004).

11.4 It was in this context also submitted by learned advocate Mr.D.C.Dave that, if the appellant concerned were given an opportunity of hearing before discarding the fee structure proposed by them and to explain the rationale and requirement of higher fees, the Committee could have fixed appropriate fees taking care of the additional requirements and proposed capital expenditure of several colleges. It was also submitted that the appellant could have persuaded the Committee not to discard the fee structure proposed by the appellant as there was no element of capitation fee or profiteering in the proposed fees.

12. It was also submitted for the appellant that a public duty which need not necessarily be imposed by statute was cast upon the Committee and a writ of mandamus was the appropriate remedy which could be issued under Article 226, as held by the Supreme Court in ANDI MUKTA SADGURU SHREE MUKTAJEE VANDAS SWAMI SUVARNA JAYANTI MAHOTSAV SMARAK TRUST v. R.RUDANI [(1989) 2 SCC 691]. It was submitted, relying on the observations in VENKATARAMAN & CO. PVT. LTD. v. STATE OF MADRAS [AIR 1966 SC 1089] that, where a statute confers exclusive jurisdiction on the authorities constituting the said machinery.....the authority created by a statute cannot question the vires of that statute or any of the provisions under which it functions. Therefore, such issues can only be raised in a petition under Article 226 before the High Court.

13. Replying to the above submissions, learned senior advocate Mr.B.P.Tanna submitted that, in ISLAMIC ACADEMY (supra), the Hon'ble Supreme Court has made an attempt at filling the vacuum till an appropriate enactment on the subject-matter of fees was legislated. As held by the Supreme Court in VINEET NARAIN AND OTHERS V. UNION OF INDIA AND ANOTHER [(1998) 1 SCC 226], in absence of appropriate legislation and even executive orders in such matters of public interest and urgency, the Supreme Court can issue orders and directions to fill the gap for enforcement of the fundamental right and doing complete justice in the case. There are ample powers conferred by Article 32 read with Article 142 to make orders which have the effect of law by virtue of Article 141 and there

is mandate to all authorities to act in aid of the orders of the Supreme Court as provided in Article 144 of the Constitution. This power has been recognised in a catena of decisions of the Supreme Court and it can be exercised, if need be, by issuing necessary directions to fill the vacuum till such time the legislature steps in to cover the gap or the executive discharges its role. It is the duty of the executive to fill the vacuum by executive orders, because its field is coterminous with that of the legislature, and where there is inaction even by the executive, for whatever reason, the judiciary must step in, in exercise of its constitutional obligations under the aforesaid provisions, to provide a solution till such time the legislature acts to perform its role by enacting proper legislation to cover the field. It was, on that basis, submitted that all that could be expected of the Committee executing an order of the Supreme Court was fairness and opportunity of being heard; and knocking of the doors of the Court for every problem arising from implementation of the judgment was expressly prohibited. Tracing the genesis of the Committee in the Scheme envisaged in UNNI KRISHNAN J.P. AND OTHERS v. STATE OF ANDHRA PRADESH AND OTHERS [(1993) 1 SCC 645], it was pointed out from paragraph 210 (6) (a) thereof that the Committee envisaged there was not headed by a retired High Court Judge and was not bound to give any personal hearing to anyone or follow any technical rules of law. The fees at much lower levels fixed by such Committee were never called into question. Relying upon the Full Bench decision of the Supreme Court in E.S.P.RAJARAM AND OTHERS v. UNION OF INDIA AND OTHERS [(2001) 2 SCC 186], it was pointed out that Article 142 vests power in the Supreme Court to pass such decree or make such order as is necessary for doing complete justice and that provision contains no limitation regarding the causes or the circumstances in which the power can be exercised, nor does it lay down any condition to be satisfied before such power is exercised. The exercise of power is left completely to the discretion of the highest court of the country and its order or decree is made binding on all the courts or tribunals throughout the territory of India. Therefore, the decree or order made in exercise of such plenary powers can be read or its implementation aided by the High Court, but the High Court cannot add to or read anything more in the order of the Supreme Court.

13.1 In a similar situation, awaiting legislation, the Supreme Court in VISHAKA & OTHERS v. STATE OF RAJASTHAN AND OTHERS [(1997) 6 SCC 241] laid down the guidelines and norms to fill up the vacuum until a legislation was

enacted and declared that that was done in exercise of the power available under Article 32 and it would be treated as the law declared by the Supreme Court under Article 141 of the Constitution. In SHRI SITARAM SUGAR CO. LTD. v. U.P.STATE SUGAR CORPORATION LTD. [(1990) 3 SCC 223], the impugned orders notifying the price determined for sugar of various grades and produced in various zones were characterised as legislative. It was observed by the Supreme Court that a quasi-judicial order emanates from adjudication which is a part of the administrative process resembling a judicial decision by a court of law. That analogy was imperfect and perhaps unhelpful in classifying borderline or mixed cases which are better left unclassified. However, price fixation was held to be in the nature of a legislative action even when it was based on objective criteria founded on relevant material, but no rule of natural justice was applicable to such order. It was also observed that whether an order was characterized as legislative or quasi-judicial, or whether it was a determination of law or fact, the judgment of the expert body entrusted with power is generally treated as final and the judicial function was exhausted when it was found to have "warrant in the record" and a rational basis in law. Any act of the repository of power, whether legislative or administrative or quasi-judicial, is open to challenge if it is in conflict with the Constitution or the governing Act or the general principles of the law of the land or it is so arbitrary or unreasonable that no fair minded authority could ever have made it. The court has neither the means nor the knowledge to re-evaluate the factual basis of the impugned orders. Therefore, price fixation is not within the province of the courts. .....The court does not substitute its judgment for that of the legislature or its agents as to matters within the province of either. The court does not supplant the "feel of the expert" by its own views.

13.2 It is held in STATE OF PUNJAB v. TEHAL SINGH [(2002) 2 SCC 7], while making distinction between legislative, administrative and quasi-judicial acts, that a legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases and it usually operates in future; while an adjudication, on the other hand, applies to specific individuals or situations. But this is only a broad distinction, not necessarily always true. Administration and administrative adjudication may also be of general application and there may be legislation of particular application only. The principles of law that emerged were:

(1) where provisions of a statute provide for the legislative activity i.e. making of a legislative instrument or promulgation of general rule of conduct or a declaration by a notification by the Government that certain place or area shall be part of a Gram Sabha and on issue of such a declaration certain other statutory provisions come into action forthwith which provide for certain consequences;

(2) where the power to be exercised by the Government under provisions of a statute does not concern with the interest of an individual and it relates to public in general or concerns with a general direction of a general character and not directed against an individual or to a particular situation; and

(3) lay down future course of actions,

the same is generally held to be legislative in character.

13.3 It is held in SUNDARDAS KANAYALAL BHATIJA v. COLLECTOR, THANE, MAHARASHTRA [(1989) 3 SCC 396] that in absence of express statutory provision for compliance with principles of natural justice, those principles are not attracted to decision taken in legislative process. Such decision is not amenable to judicial review and the rules of natural justice are not applicable to legislative action, plenary or subordinate.

13.4 It is also held by the Supreme Court in CHANDRAKANT PATIL v. STATE through CBI [AIR 1998 SC 1165] that power under Article 142 of the Constitution is entirely of different level and is of a different quality which cannot be limited or restricted by provisions contained in statutory law. No enactment made by the Central or State legislature can limit or restrict the power of the Supreme Court under Article 142, though while exercising it the Court may have regard to statutory provisions.

14. It is held by the Supreme Court in NEELIMA MISRA v. HARINDER KAUR PAINTAL AND OTHERS [(1990) 2 SCC 746] that in matters of appointment in the academic field the

Court generally does not interfere. The courts should be slow to interfere with the opinion expressed by the experts in the absence of mala fide alleged against the experts. When appointments are based on recommendations of experts nominated by Universities, the High Court has got only to see whether the appointment had contravened any statutory or binding rule or ordinance. The High Court should show due regard to the opinion expressed by the experts constituting the Selection Committee and its recommendation on which the Chancellor had acted. The Chancellor, however, has to act properly for the purpose of which the power is conferred. He must take a decision in accordance with the provisions of the Act and the statutes. He must not be guided by extraneous or irrelevant consideration. He must not act illegally, irrationally or arbitrarily. Any such illegal, irrational or arbitrary action or decision, whether in the nature of a legislative, administrative or quasi-judicial exercise of power is liable to be quashed being violative of Article 14. The principle of equality enshrined in Article 14 must guide every State action, whether it be legislative, executive or quasi-judicial. An administrative function is called quasi-judicial when there is an obligation to adopt the judicial approach and to comply with the basic requirements of justice. Where there is no such obligation, the decision is called "purely administrative" and there is no third category. Though conclusiveness of the decision without the need of confirmation or adoption by any other authority is generally regarded as one of the features of judicial power but the order made by a statutory authority even where it is given finality does not thereby acquire judicial quality if no other characteristic of judicial power is present. Power to make orders that are binding and conclusive is not by itself a decisive factor to hold that the power is judicial. An administrative order which involves civil consequences must be made consistently with the rule expressed in the Latin maxim audi alteram partem. It means that the decision maker should afford to any party to a dispute an opportunity to present his case. The person concerned must be informed of the case against him and the evidence in support thereof and must be given a fair opportunity to meet the case before an adverse decision is taken. The shift now, however, is to a broader notion of "fairness" or "fair procedure" in the administrative action. As far as the administrative officers are concerned, the duty is not so much to act judicially as to act fairly. For this concept of fairness, adjudicative settings are not necessary, nor it is necessary to have lis inter parties. There need not be any struggle between two opposing

parties giving rise to a "lis". There need not be resolution of lis inter parties. The duty to act judicially or to act fairly may arise in widely differing circumstances. It may arise expressly or impliedly depending upon the context and considerations. All these types of non-adjudicative administrative decision making are now covered under the general rubric of fairness in the administration. But then even such an administrative decision, unless it affects one's personal rights or one's property rights, or the loss of or prejudicially affects something which would juridically be called at least a privilege, does not involve the duty to act fairly consistently with the rules of natural justice.

15. In the interesting case of judicial review of discretionary grant to a student by the local authority, Sir John Donaldson MR in R v. LANCASHIRE COUNTY COUNCIL, EX PARTE HUDDLESTON [(1986) 2 All England Reporter 941] has observed:

> "Notwithstanding that the courts have for centuries exercised a limited supervisory jurisdiction by means of the prerogative writs, the wider remedy of judicial review and the evolution of what is, in effect, a specialist administrative or public law court is a post-war development. With very few exceptions, all public authorities conscientiously seek to discharge their duties strictly in accordance with public law and in general they succeed. But it must be recognised that complete success by all authorities at all times is a quite unattainable goal. Errors will occur despite the best of endeavours. The courts, for their part, must and do respect the fact that it is not for them to intervene in the administrative field, unless there is a reason to inquire whether a particular authority has been successful in its endeavours. The courts must and do recognise that, where errors have, or are alleged to have, occurred, it by no means follows that the authority is to be criticised. In proceedings for judicial review, the applicant no doubt has an axe to grind. This should not be true of the authority. There was no conscious attempt to conceal the thought processes of the chairman when he decided to reject the application for a discretionary grant. .....The judges who man the public law court are, or very soon become, specialists with a very real appreciation of the realities of public administration. They know

that the decision making process can be complex. They know that it may often depend on the expertise of the decision makers. .....But authorities assist neither themselves nor the courts, if their response is a blanket assertion of having acted in accordance with law or one which begs the question. If the issue is whether an authority took a particular factor into account, it will be a sufficient response to show that it did. But if the allegation is that a decision is prima facie irrational and that there are grounds for inquiring whether something immaterial may have been considered or something material omitted from consideration, it really does not help to assert baldly that all relevant matters and no irrelevant matters were taken into consideration without condescending to mention some at least of the principal factors on which the decision was based. .....When it came to proceedings for judicial review, the authority could well have identified which of these factors, and what other factors, it had regarded as of special significance and it might also have provided some indication of the extent to which it did in fact make discretionary grants. Indeed, since there was no suggestion of any bias against the applicant, the simplest way to dispose of this part of the applicant might well have been to have revealed that over a period they had made X mandatory grants and Y discretionary grants. However, in the absence of such further and more detailed explanation, the Court has to decide whether on the materials before it, the authority erred in the exercise of its discretion. The grant of leave to apply for judicial review does not constitute a licence to fish for new and hitherto unperceived grounds of complaint".

15.1 In another judgment in PICKWELL v. CAMDEN LONDON BOROUGH COUNCIL [(1983) 1 ALL ENGLAND REPORTER 602], Ormrod LJ observed:

"The Court had to be concerned with the quality of the decision itself rather than the methods by which it was reached. And, Forbes J. has observed in the same judgment that in exercise of its supervisory jurisdiction under section 161 of the 1972 Act, the court was to apply the well-established test applicable to decisions made by local authorities pursuant to a

discretion conferred by Parliament, namely, whether in reaching its decision the authority had been affected by immaterial considerations or, conversely, had ignored material considerations, or had acted in a way that no reasonable authority properly directing itself to what was material could have concluded that it was entitled so to act. Further, the court would be less inclined to hold that an authority had acted ultra vires when its decision had been made in an emergency to provide a solution to an urgent and pressing problem.

15.2 As held by the Supreme Court in RESERVE BANK OF INDIA v. C.L.TOORA [(2004) 4 SCC 657], where high-power Selection Board presided over by a retired High Court Judge had found the respondent unsuitable, it did not require interference and the Committee concerned could decide its own procedure.

16. It would be pertinent to note here that the Supreme Court has, in a matter related to the same Committee, while entertaining S.L.P. (Civil) No.11930/2004 preferred from the judgment and order dated 2.7.2004 in L.P.A. No.1354 and C.A.4980 of 2004 of this High Court, passed the order dated 6.8.2004 as under:

" The Committee which was to be set up and which came to have been set up pursuant to the decision of this Court in Islamic Academy of Education vs. State of Karnataka [(2003) 6 SCC 697] is required to function as an independent body. That is why the Committee was directed to be headed by a retired judge so that decisions are taken objectively and impartially despite the fact that some members of the Committee so set up may in fact be functioning in other capacities with other interested bodies such as the University or the State Government. These disputes which have now been brought before us, in our opinion, relate to the discharge of functions by the Committee as a body and must be raised before the Committee at the first instance.

We are of the view that the Committee should keep in mind the observations of the Court while discharging its functions and deciding even those complaints with regard to the functioning of the Committee or its members as also those matters out of implementation of any action of

the Committee.

In view of this order, the contempt petition and all the IAs are dismissed as not pressed".

(emphasis supplied)

16.1 In UNION OF INDIA v. E.G.NAMBUDIRI [(1991) 3 SCC 38, it is observed that in the absence of any statutory rules or statutory instructions requiring the competent authority to record reasons in rejecting a representation made by a government servant against the adverse entries, the competent authority is not under any obligation to record reasons. .....In governmental functioning before any order is issued, the matter is generally considered at various levels and the reasons and opinions are contained in the notes on the file. The reasons contained in the file enable the competent authority to formulate its opinion. If such an order is challenged in a court of law, it is always open to the competent authority to place the reasons before the court which may have led to the rejection of the representation. It is always open to an administrative authority to produce evidence aliunde before the court to justify its action. .....The application of principles of natural justice, and its sweep depend upon the nature of the rights involved, having regard to the setting and context of the statutory provisions. Where a statute requires an authority though acting administratively to record reasons, it is mandatory for the authority to pass speaking orders and in the absence of reasons the order would be rendered illegal. Where a vested right is adversely affected by an administrative order, or where civil consequences ensue, principles of natural justice apply even if the statutory provisions do not make any express provision for the same, and the person concerned must be afforded opportunity of hearing before the order is passed. But principles of natural justice do not require the administrative authority to record reasons for the decision as there is no general rule that reasons must be given for administrative decision.

17. Appreciating the facts of these cases in light of the above observations, it is apparent that the Fee Committee was constituted by virtue of and was performing its functions in accordance with the directions of the Supreme Court which expressly conferred upon it the power and function to decide whether the fees proposed by the institutions were justified or indicated profiteering or charging of capitation fees; and it was competent and

empowered either to approve the proposed fee structure or fix some other fees which would be binding for a period of three years. The admittedly difficult task of seeing that professional institutions do not become auction houses for the purpose of selling seats, even in absence of sufficient guidelines, was left to the Committee. Thus, there was a wide area of discretion to be exercised by the Committee and to ensure fairness of the procedure and correctness of its decision, the Apex Court provided for its constitution comprising of a retired High Court Judge, a representative of Medical Council of India and a Chartered Accountant and also provided for production and scrutiny of all relevant documents. The relevant considerations for the Committee are also broadly delineated in the observations made in paragraphs 139, 147, 154, 155 and 156 quoted hereinabove from the judgment in ISLAMIC ACADEMY (supra).

17.1 The Committee was essentially acting in execution of the order of the Supreme Court. According to the provisions of the Supreme Court (Decrees and Orders) Enforcement Order, 1954, any order made by the Supreme Court shall be enforceable in accordance with the provisions of law for the time being in force relevant to the enforcement of the orders of such authority as the Supreme Court may specify in the order or in the subsequent order that may be made by it on the application of any party to the proceeding. In absence of any other applicable provisions of law relating to enforcement of the order of the Supreme Court, in the facts of these cases, a "subsequent order" could have been sought and obtained by a party to the proceeding before the Supreme Court. The appellant could have, but have not, obtained subsequent orders for enforcement of the order of the Supreme Court, if it were not duly and properly enforced according to the appellant. In absence of such further directions or subsequent orders, the duty cast upon the High Court by virtue of Article 144 of the Constitution is to act in aid of the Supreme Court. Viewed in that perspective, the High Court cannot entertain the plea that execution of the order of the Apex Court would result into violation of any of the fundamental rights of the appellant. Similarly, the High Court cannot add to or issue further directions after the order of the Supreme Court is executed and the fee structure is fixed.

17.2 As held by the Supreme Court in STATE OF U.P. v. JOHRI MAL [(2004) 4 SCC 714], the power of judicial review is not intended to assume a supervisory role or don the robes of the omnipresent. The power is not

intended either to review governance under the rule of law nor do the courts step into the areas exclusively reserved by the suprema lex to the other organs of the State. Decisions and actions which do not have adjudicative disposition may not strictly fall for consideration before a judicial review. An order passed by an administrative authority exercising discretion vested in it, cannot be interfered in judicial review unless it is shown that exercise of discretion itself was perverse or illegal.

The following observations of the Supreme Court in STATE OF U.P. v. RENUSAGAR POWER CO. [(1988) 4 SCC 59] may be useful in summing up the above discussion in the present cases:

"In the present case, the facts and circumstances of the case were examined in consonance with the provisions of natural justice. All relevant factors were given consideration but subject to public interest. Though each factor had not been independently considered, but these have been borne in mind. The impugned order does not suffer from the vice of non-application of mind or non-consideration of the relevant factors. Non-supply of the basis of the report relied on by the Government would not by itself in the facts and circumstances of the case make the order of the State Government vulnerable to challenge. Unreasonableness and natural justice have to be judged in that context. .....The Government did not act either in violation of the principles of natural justice or arbitrarily or in violation of the previous directions of the High Court."

17.3 The argument against the above approach was that the Committee was "State" under Article 12 and "Authority" under Article 226 of the Constitution which had become functus officio after its report for fixation of fees and hence, the motion for judicial review was maintainable. Elaborating that argument, it was submitted that the Committee came to be constituted as the culmination of judicial process in a lis and can never be attributed legislative functions. And, if the Committee, supposed to be a creature of the judgment of the Supreme Court, were set up not exactly in accordance with the charter by which it was created, the fees fixed by it were ultra vires, illegal and non est. Similarly, if the guidelines and directions of the Supreme Court issued while ordering constitution of the Committee were

not complied, particularly in respect of considering the relevant material, the ultimate decision would be vitiated and the High Court must declare that the fee structure prescribed by the Committee is not binding.

17.4 In view of the order dated 6.8.2004 of the Supreme Court quoted in para 16 hereinabove, we hold that the complaints, if any, regarding constitution of the Committee, its procedure and working, or matters arising out of implementation of any action of the Committee, were required to be raised before the Committee and a petition, directly or indirectly agitating those matters, was not maintainable. We are also inclined to hold that the Committee which was entrusted the task of fixing fees of a number of colleges in various disciplines in a short span of time had no alternative but to distribute the work of collection and analysis of data to a number of sub-committees and that it was neither mandatory nor feasible for its proceedings to have quasi-judicial trappings. Nor does the actions and decisions of the Committee have an adjudicative disposition.

18. Even assuming that this Court had jurisdiction to examine whether the Committee had taken into account relevant material and not fixed the fees on the basis of any irrelevant consideration, submissions of the learned counsel for the appellant on the issue of propriety of the proposed fees in respect of particular institutions could not commend themselves. Wading through the verdant verbiage of prolix pleadings in these cases, it was unmistakable that the pleas of the appellants were propelled more by uncharitable avarice than any genuine plans for development or needs for proper maintenance of the standard of education. The details, in brief, of the facts and figures tendered by the institutions and appraisal thereof by the Committee could be crystallised as under.

18.1 In L.P.A. 1380 of 2004, the fees proposed by the medical college was Rs.2,75,000/= against which the fees prescribed by the Committee was Rs.1,45,000/=. According to the college, admittedly, the total expenses for the year 2003-04 was Rs.728.29 lakhs to which was to be added the uncovered operational deficit of the hospital and inflation at the rate of 6% per annum of Rs.236.58 lakhs and Rs.57.89 lakhs respectively. The total additional expenditure planned and sought to be added to the cost of education on account of scholarships, additional faculties, welfare benefit for employees, additional emoluments, additional cost for internet connectivity etc. was Rs.164.59 lakhs and reasonable surplus for

further expansion at the rate of 20% was Rs.237.47 lakhs; thus projecting total estimated cost to be Rs.1424.82 lakhs in the year 2004-05 and jacking up the cost per student per annum to Rs.3.17 lakhs. In view of such proposal, the Committee sought further data, including balance sheet, and the Committee found that whereas the depreciation claimed for the year 2003-04 was Rs.8.60 lakhs, the depreciation for the year 2004-05 was claimed at Rs.136.21 lakhs. Similarly, salary for teaching staff for the year 2003 was shown as Rs.398.86 lakhs, but in the subsequent years it was substantially increased so that in the projection for the year 2007 it reached to Rs.528.88 lakhs. Such substantial increases led the Committee to come to the irresistible conclusion about an attempt at profiteering. The Note of the Committee visiting the college stated that the entire salary of teaching staff which was also associated with the hospital was debited in the accounts of the college. The Committee also found that sharp increase in the amount of depreciation claimed by the college was on account of the claim of depreciation on equipments of the hospital also and addition to the college building. In the final analysis, if the staff salary were allocated between the college and the hospital and Rs.10,000/= per student were provided for hospital utilization, the cost per student based on the projection for the year 2004 worked out to Rs.1,40,000/= per student of the medical college and Rs.35,000/= to Rs.40,000/= per student of the physiotherapy college. The Committee, therefore, fixed the fees at Rs.1,45,000/= and Rs.40,000/= in respect of medical college and physiotherapy college respectively, which was the highest among all the colleges in the respective faculty. Having been taken through the balance sheets, statements and other data submitted by the appellants themselves, it was apparent to us that it was the appellant who had sought to inject irrelevant considerations into the calculation of appropriate fees and the Committee had rightly discarded such imaginary projections of figures to arrive at a reasonable figure of fees in accordance with the broad guidelines provided by the Supreme Court in the judgment in ISLAMIC ACADEMY (supra).

18.2 Similarly, in L.P.A. No.1382 of 2004, the appellant Trust running a physiotherapy college at Surat proposed annual fees of Rs.95,000/= on the basis of the promise that they were going to pay to their staff as per the University/University Grants Commission scale from the new academic year commencing from 1st July, 2004. The Committee found that while the salary for teaching staff in the year 2003 was Rs.6.76 lakhs, its estimate

for the next year increased to Rs.9.96 lakhs and it was projected to be Rs.31.99 lakhs for the year 2005, Rs.35.19 lakhs for the year 2006 and Rs.38.71 lakhs for the year 2007. As regards non-teaching staff, the actual salary paid was Rs.0.82 lakhs in the year 2003, but it reached upto Rs.16.48 lakhs in the year 2007. Such substantial increases led the Committee to come to the irresistible conclusion about an attempt at profiteering. Having regard to the actual cost incurred by the college in the years ending on 31st March 2003 and 2004 and providing reasonable revision and increase, the Committee fixed fees at Rs.35,000/= per annum per student although the average cost per student according to the revised estimate was to be Rs.27,000/= per student.

18.3 In L.P.A. No.1383 of 2004, the physiotherapy college proposed fees of Rs.75,000/= against which the Committee fixed the fees of Rs.40,000/=. The total expenditure in the year 2002-03 shown by the institution was Rs.73,46,100/- out of which Rs.25 lakhs were shown as surplus for development. Subtracting that amount of Rs.25 lakhs and dividing the remainder amount of Rs.48,46,100/= by 135 (students: 30 x 4.5 years), the actual amount worked out to Rs.35,900/= per student and keeping in view the fact that some reasonable amount might be incurred by the institution for future development, the Committee fixed fees at Rs.40,000/=.

18.4 In L.P.A. No.1395 of 2004, the appellant Trust running a physiotherapy college proposed fees of Rs.75,000/=. The Committee found that the average cost per student for the years 2002-03 to 2006-07 came to Rs.32,000/= and fixed fees at Rs.35,000/=.

18.5 In L.P.A. No.1733 of 2004, the medical college run by the appellant proposed fees of Rs.2,50,000/= on the basis of the statement of cost which admittedly included the entire expenses of the hospital. On verification of the costs and financial records, it was found that the appellant was planning for additional capital investment in staff quarters, landscaping, effluent treatment plant, instruments and equipments and library to the tune of Rs.5.15 crores in the year 2004-05. It had already incurred an expenditure of Rs.15 crores in the building and Rs.4 crores in other assets upto 31st March, 2004. However, the average additional investment in other fixed assets during the last five years was approximately Rs.50 lakhs in assets other than building. The college was projecting salary cost of Rs.9 crores under the ideal set up as against the salary cost of approximately Rs.3.75 crores incurred during the last

two years. This cost of salary was considered for both the college and the hospital staff. The appellant had adopted inconsistent accounting method for fixed assets. Though no depreciation was provided upto 2002-03, the addition of assets other than building were considered as revenue expenditure and charged to income and expenditure account in the year in which the same were purchased. The appellant had allocated Rs.54 lakhs and Rs.150 lakhs as development expenditure during the years 2002-03 and 2003-04 respectively for investment in fixed assets. The Committee recast the expenditure for the year 2006-07 on the basis of actual expenditure for the year 2003-04 with appropriate additions such as 7.5% rise in salary and making suitable adjustments in expenditure such as depreciation on buildings. Ultimately, fees of Rs.1,30,000/= per annum per student was fixed for the college run by the appellant.

The Committee having considered the above facts and figures and having given the appellants an opportunity of presenting their case before it as envisaged in the judgment in ISLAMIC ACADEMY (supra), we find that the fee-structure evolved by the Committee does not suffer either from non-application of mind or non-consideration of the relevant factors. Non-supply of the basis of fixation of fees would not by itself, in the facts and circumstances of the case, make the fee-structure vulnerable to challenge as held by the Supreme Court in STATE OF U.P. v. RENUSAGAR POWER CO. (supra).

19. It was seen from the record of these appeals that the appellant in L.P.A. No.1380 of 2004 had approached this Court by way of Special Civil Application No.8542 of 2003 to challenge the Government Resolutions dated 9.5.2003 and 28.5.2003. The operation of those Resolutions was stayed by the Court on certain conditions and L.P.A. No.862 of 2003 was preferred to challenge those conditions, wherein in C.A. No.6192 of 2003, by order dated 5.9.2003 of a Division Bench of this Court, the operation of the said Resolutions was stayed on, inter alia, the following conditions:

" xxxx xxxx xxxx

(iii) The applicant shall notify its fee structure to the Joint Admission Committee for Professional Courses during the course of the day.

xxxx xxxx xxxx

(vi) After the amount is deposited by the student concerned in the account of the applicant, the applicant shall be at liberty to withdraw the amount of fees prescribed by the Government in Government Resolution dated May 28, 2003, i.e. Rs.1,15,000/= per annum per student so far as Medical Courses are concerned, and Rs.35,000/= per annum per student so far as Physiotherapy Courses are concerned.

(vii) The balance amount of the fees paid by the student concerned shall remain with the Bank which shall not be permitted to be withdrawn and the said amount may be invested by the Bank in the fixed deposit so that the amount earns interest.

(viii) The aforesaid deposit of the balance amount of fees shall be subject to approval of final fees structure of the applicant by the Committee to be appointed as per the directions of the Supreme Court in Islamic Academy of Education & Anr. v. State of Karnataka & Ors. JT 2003 (7) SC 1.

(ix) The applicant is directed to file an undertaking before this Court within eight days from today stating that if the fees structure of the applicant is higher than the fees which may be fixed by the Committee to be appointed pursuant to the above mentioned decision, the applicant shall refund the excess amount received by the applicant from the student concerned within one month from the day of finalisation of fees structure by the Committee."

(emphasis supplied)

In subsequent order dated 28.4.2004 in the group of L.P.As. No.862, 863, 864, 879, 868 and 868 of 2003, a consensus was recorded by which the undertakings of the appellants given to the Court pursuant to the above interim orders to abide by the decision of the Fee Committee constituted in accordance with the decision of the Supreme Court were to continue. It was also

clarified that it was understood that withdrawal of the amounts by the appellant would be subject to continuance of the undertakings as stipulated. It was specifically directed that the parties will abide by the terms agreed to among them.

19.1 In view of the undertakings required to be filed and acted upon by the appellant, it was incumbent upon the appellant to refund the amounts collected in excess within one month from the day of finalisation of fee-structure by the Committee. Instead of abiding by the express conditions as aforesaid and the undertakings filed in the Court, the appellant resorted to the legal proceedings by way of the original special civil applications, without initially disclosing in the petition the factual background and the factum of filing of the undertaking, which petitions were summarily rejected by the impugned judgment on 1.7.2004. Even thereafter, the present group of appeals were filed and the amounts were admittedly not refunded. The initial order dated 29.7.2004 in these appeals, inter alia, recorded as under:

> "13. We find that if the fee-structure as recommended by the Committee remains undisturbed, the appellant college managements will have to refund the amount collected by the college managements last year in excess of the amount of fees as per the fee-structure recommended by the Committee by the impugned decision which is applicable to the students admitted to the appellant-colleges from August 2003 onwards. The appellants' prayer for interim relief is, therefore, required to be considered in respect of the said refund portion only, because even if the appeals succeed, the matter will have to go back to the Committee for reconsideration."

Thereafter, when none appeared on behalf of respondents No.1 and 2 in response to the notice for interim relief, a detailed order dated 3.8.2004 granting interim relief in Civil Application No.5177 of 2004 came to be passed permitting the appellant to collect fees higher than the fees prescribed by the Committee on certain conditions and to retain the amounts which were required to be refunded. Thus, in short, the appellants have continued to litigate without abiding by their own undertakings which were required to be filed in the earlier proceedings, only on the basis of their own assertion, even after rejection of their petitions by the impugned

judgment, that fixation of the fees by the Committee set up under the directions of the Supreme Court was void and non est. This shows disturbing disrespect, by some academic institutions, for the rule of law and the legal institutions to which the appellants have taken frequent recourse.

Therefore, since the respondent Committee as well as the students represented by some of the parties who were dragged to the Court are bound to have been put to heavy costs, inconvenience and anxiety, it would be appropriate to award realistic costs while dismissing the appeals. It is also necessary to place on record our disapproval of the unwarranted invectives and baseless innuendos employed in the unnecessarily elongated and profusely argumentative affidavits, filed at the appellate stage, on behalf of the appellants.

20. In the result, for the reasons and under the circumstances discussed hereinabove, all the appeals are dismissed with costs. The amount of special costs, quantified in only one appeal, i.e. L.P.A. No.1380 of 2004, at Rs.75,000/=, shall be paid by the appellant therein to the respondents in the following proportion, within one month from the date of this order. Rs.50,000/= shall be paid to the respondent No.2 towards the cost of respondents No.1 and 2, Rs.15,000/= to the Parents Association of Medical and Dental Students subsequently joined as party and Rs.10,000/- to the learned advocate Mr.Aspi Kapadia towards reimbursement of the expenses of the students represented by him.

Civil Applications No.5177, 5187, 5186, 5291 and 7072 of 2004 are rejected and Rule issued in each application is discharged. Consequently, the appellants shall, within one month from today, refund to the students all the amounts, collected by them or kept deposited in the bank, in excess of the fees prescribed by the respondent Committee, alongwith interest accrued thereon in cases where full or part of such excess amounts have remained deposited in bank. Civil Application No.9910 of 2004 does not survive and stands disposed. Notice therein is accordingly discharged.

Sd/-

(M.S.Shah, J.)

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)